

APPEAL NO. 93356

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act). On February 18, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer. The issues acknowledged at the CCH were:

1. Was the Claimant (Mr. H) injured in the course and scope of his employment?
2. Did the Claimant have a good cause for failing to notify his Employer in a timely manner?

The hearing officer determined that the claimant was injured in the course and scope of his employment on (date of injury), and that the injury was reported to the employer within 30 days of the day of injury.

Appellant, carrier herein, filed a request for review, contending that the hearing officer's decision was erroneous as being against the great weight of the credible evidence and requests we reverse the hearing officer's decision and render a decision in its favor. Carrier subsequently filed an amended request for review alleging the same points of error as the initial request for review. Respondent, claimant herein, does not file a response.

DECISION

We find that the appeal in this matter was not filed within the time limits required by Article 8308-6.41(a) and the decision of the hearing officer is the final administrative decision in this case. See Article 8308-6.34(h) of the 1989 Act.

As a procedural point, we note that carrier's request for review recites (hearing officer)z as the hearing officer; however, the decision was written by (hearing officer).

The carrier apparently concedes the appeal was not timely filed by stating:

The Decision and Order was not (timely) forwarded to the attorney for Carrier. Therefore, the Carrier and the attorney for Carrier were denied the opportunity to discuss whether an appeal should be filed in this matter, and hence, a timely appeal was not filed by carrier. A true and correct copy of the Decision and Order rendered in this case is attached hereto as Exhibit A and incorporated herein for all purposes, showing that the attorney for carrier was not forwarded a copy of said Decision and Order.

Apparently, the issue carrier suggests is that the time for filing does not (or should not) begin until the attorney for the carrier is served a copy of the hearing officer's decision and has had an opportunity to discuss an appeal with the client, carrier.

We note that the carrier, as the party of interest, was sent a copy of the hearing officer's decision pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(b) (Rule 102.5(b)) at the carrier's Austin representative's address. We also note that pursuant to Rule 156.1, each insurance carrier is required to designate an Austin representative and pursuant to Rule 156.1(c), "[a]ny notice from the commission, sent to the designated representative's Austin address is notice from the commission to the insurance carrier." Furthermore, in Texas Workers' Compensation Commission Advisory 92-07, dated November 3, 1992, all carrier representatives were advised:

Beginning November 30, 1992, all documents and notices required to be provided by the Texas Workers' Compensation Commission to insurance companies that provide workers' compensation coverage will be placed in the Carrier's Austin Commission Representative's Box on the first floor in the Central Office.

This includes, but is not necessarily limited to, documents such as Set Notices for Benefit Review Conferences and Contested Case Hearings and transmittal letters containing Benefit Review Conference Reports, Contested Case Hearing Decisions, and Appeals Panel Decisions. No additional copies of such documents will be mailed to Carriers' Representatives who have attended such proceedings. (Emphasis added.)

Although carrier's attorney does not specify when they, or carrier, received the hearing officer's decision, we note the decision was distributed by mail to the carrier's Austin representative, on March 15, 1993. Allowing five days for mailing pursuant to Rule 102.5(h), the deemed date of receipt would have been March 20, 1993, and 15 days from that date would have been Sunday, April 4, 1993. Pursuant to Rule 102.3(a)(3), if the last day of any period is a Saturday, Sunday or legal holiday, the period for filing is extended to include the next day that is not a Saturday, Sunday or legal holiday, which in this case would be Monday, April 5, 1993, and which would be the statutory date by which an appeal must be filed. The appeal was not filed until May 7, 1993, and the amended request for review was not filed until May 19, 1993.

We will accept the carrier's attorney's representation that they did not receive the decision until some time after the statutory period for filing an appeal had expired; however, in accordance with Texas Workers' Compensation Commission Appeal No. 92219, decided July 15, 1992, and Rule 102.5(b) we have previously held that it is receipt by a party, in this case the carrier, not the attorney, which controls. See also Texas Workers' Compensation Commission Advisory 92-07, quoted above.

Article 8308-6.34(h) states the decision of the hearing officer is final in the absence of a timely appeal. Determining the appeal was not timely filed, as set forth above, we have

no jurisdiction to review the hearing officer's decision.

Accordingly, the decision of the hearing officer is final.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge